

**In The Matter Of:**  
*Tamesha Means v.*  
*United States Conference of Catholic Bishops*

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*Motions Hearing*  
*May 22, 2014*

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TAMESHA MEANS,

Plaintiff,

V

Case No. 13-14916

UNITED STATES CONFERENCE OF  
CATHOLIC BISHOPS,  
STANLEY URBAN,  
ROBERT LADENBURGER,  
MARY MOLLISON,

Defendants.

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MOTIONS HEARING  
BEFORE THE HONORABLE DENISE PAGE HOOD  
U.S. DISTRICT JUDGE  
231 THEODORE LEVIN BUILDING  
COURTROOM 237  
DETROIT, MI 48226  
THURSDAY, MAY 22, 2014

(APPEARANCES CONTINUED)

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	I N D E X	PAGE
1		
2	MOTIONS HEARING	
3	DEFENDANTS' MOTION FOR CHANGE OF VENUE	
4	BY MR. LEVASSEUR	5
5	RESPONSE BY MS. TUCKER	13
6	REBUTTAL BY MR. LEVASSEUR	21
7	REBUTTAL BY MR. GETTO	24
8	RE-REBUTTAL BY MS. TUCKER	25
9	DEFENDANT'S MOTION TO DISMISS	
10	BY MR. GETTO	26
11	REBUTTAL BY MS. TUCKER	30
12	REBUTTAL BY MR. LEVASSEUR	40
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Thursday, May 22, 2014

2 Detroit, Michigan

3 At approximately 2:20 p.m.

4 THE CLERK: The court calls case number  
5 13-14916, Means versus United States Conference of  
6 Catholic Bishops.

7 THE COURT: Good afternoon, everyone. Put  
8 your appearances on, please.

9 MS. TUCKER: Brooke Tucker on behalf of  
10 Tamesha Means, the Plaintiff.

11 MR. KOROBIKIN: Daniel Korobkin appearing on  
12 behalf of the Plaintiff.

13 MR. STEINBERG: Michael Steinberg appearing  
14 on behalf of the Plaintiff.

15 MR. LEVASSEUR: Dennis Levasseur appearing  
16 on behalf of the Defendants Urban, Ladenburger and  
17 Mollison.

18 And with me is my associate Michael Serra of  
19 the same firm. And I brought along one of our summer  
20 interns.

21 MR. GETTO: Good afternoon. Cameron Getto  
22 on behalf of the United States Conference of Catholic  
23 Bishops.

24 THE COURT: I have two motions. One is a  
25 Motion to Dismiss and one is a Motion for Change of

1 Venue.

2 I would like you to go ahead and argue them  
3 both, if you like. I would like to start with the  
4 change of venue though.

5 MR. LEVASSEUR: Thank you, Your Honor. That  
6 is my motion.

7 Once again, Your Honor, good afternoon. I'm  
8 Dennis Levasseur for Defendants Stanley Urban, Robert  
9 Ladenburger and Mary Mollison. I will refer to them as  
10 the individual Defendants so we don't have to repeat  
11 their names each time I refer to them.

12 This is the individual Defendants' Motion  
13 for Change of Venue of this case to the Western District  
14 of Michigan.

15 The Plaintiff in this case is a resident of  
16 Muskegon County, was a resident of Muskegon County at  
17 the time the cause of action allegedly arose.

18 That was in late 2010 when she sought and  
19 received medical treatment in connection with what  
20 turned out to be a difficult pregnancy.

21 And she sought that treatment at Mercy  
22 Health Partners, a hospital in Muskegon. She supposedly  
23 went into premature labor and lost a child.

24 She claims in her Complaint, which is fairly  
25 extensive, but points to the fact she not advised by

1 Mercy Health Partners of the risk to her if she  
2 continued the pregnancy term.

3 Now, we believe this is kind of a  
4 thinly-veiled medical malpractice claim, but instead of  
5 suing Mercy Health Partners and the treating physicians  
6 and other health care professionals, she elected to sue  
7 the individual Defendants and the United States  
8 Conference of Catholic Bishops claiming that Mercy  
9 Health Partners did not follow a reasonable standard of  
10 medical treatment or care because it was a Catholic  
11 hospital, Mercy Health Partners was a Catholic hospital  
12 but adhered to the U.S. Conference of Catholic Bishops'  
13 directives which do not permit abortion services.

14 Plaintiff also claims that the Catholic  
15 Health Ministries, which is not a party to this case,  
16 had a duty to act in a manner so that patients admitted  
17 to Mercy Health Partners in Muskegon receive proper  
18 care. And Catholic Health Ministries, or CHM, which  
19 again, is not a party, breached its alleged duty by  
20 requiring those Mercy Health Care Partners to adhere to  
21 the directives.

22 Now, contrary to what Plaintiff tries to  
23 suggest in its opposition papers, it has not named  
24 Catholic Health Ministries as a party. And perhaps they  
25 did so, did not name them, because CHM is an

1 unincorporated association which would have destroyed  
2 diversity of citizenship rendering this case ineligible  
3 for filing in federal court and this Court particularly.

4 Now, but this motion is under 28 U.S.C.  
5 1391, which provides a civil act may be filed in a  
6 district in which a substantial part of the events  
7 giving rise to the claim occurred.

8 The purpose of the substantiality  
9 requirement is to prevent defendants being hauled into  
10 court in a district that has little or no relationship  
11 to the dispute.

12 And it's Plaintiff's burden of establishing  
13 that venue is proper in this District and not conclusory  
14 allegations that can't satisfy that burden.

15 Now here, all that the Plaintiff alleges  
16 with regard to the individual Defendants with regard to  
17 venue is the very conclusory, and frankly, unsupported  
18 assertions that venue is proper here because the  
19 decision that Mercy Health Care Partners or Mercy Health  
20 Partners would adhere to the directives was made by the  
21 Catholic Health Ministries in the Eastern District of  
22 Michigan. That is all they say as to the propriety of  
23 venue as to, frankly, any party, but specifically the  
24 individual Defendants.

25 That is not more than a conclusory assertion



1 based on speculation.

2 They indicate in the response brief at page  
3 5 that it is upon information and belief that those  
4 directives were adopted in the Eastern District of  
5 Michigan.

6 But even if that is true, Your Honor, that  
7 doesn't satisfy Plaintiff's burden of demonstrating  
8 substantiality of actions in this District that gave  
9 rise to the what amounts, we believe, to a medical  
10 malpractice claim.

11 But however you characterize it, venue is  
12 still not proper.

13 First off, Your Honor, venue must be proper  
14 with respect to all of the Defendants, not just the  
15 individual Defendants.

16 And Plaintiff's Complaint says nothing about  
17 venue with regard to the U.S. Conference of Catholic  
18 Bishops, also a Defendant, Your Honor.

19 And we know from the Hunt Affidavit  
20 submitted by the Bishops that the directives are  
21 promulgated in Washington, DC, not in the Eastern  
22 District of Michigan.

23 So we believe the motion should be granted  
24 for that reason alone; that the venue with regard to the  
25 U.S. Conference is not proper.

1                   Secondly, Your Honor, as to the individual  
2 Defendants, according to Plaintiff's Complaint, the  
3 Catholic Health Ministries adopted the directives in May  
4 of 2009. But, if you look at the Complaint, it is  
5 alleged that Mr. Ladenburger was the chair of CHM, or  
6 Catholic Health Ministries, in 2010; and Mr. Urban is  
7 currently chair of the Catholic Health Ministries.

8                   They're not alleging they have done anything  
9 with regard to the directives or couldn't be, frankly,  
10 because the directives were, according to the Complaint,  
11 adopted in 2009.

12                  So venue is clearly not proper with regard  
13 to Mr. Ladenburger or Mr. Urban and the venue motion  
14 should be granted for that reason as well.

15                  Now, there is, I should indicate, the law  
16 clearly demonstrates in this District, the Domino's case  
17 and the Overland versus Taylor case, that venue has to  
18 be proper with regard to all of the defendants.

19                  Now thirdly, Your Honor, as to Ms. Mollison,  
20 and frankly, the other individual Defendants, venue is  
21 not proper in this District because even the nature of  
22 the claims in this case is; that is, that the treatment  
23 or lack thereof at Mercy Health Partners in Muskegon,  
24 that is the genesis of the entire case. What type of  
25 treatment she received, or lack thereof, at a hospital

1 in Muskegon.

2 We have, frankly, a plaintiff who is a  
3 resident of Muskegon, or who was in 2010. We have that  
4 she was seen by doctors and other medical health  
5 professionals in the Western District of Michigan in  
6 2010.

7 There is no indication she was ever in the  
8 Eastern District of Michigan with regard to any  
9 treatment.

10 Any damages that Plaintiff suffered occurred  
11 in the Western District of Michigan.

12 Now, Plaintiff's Complaint, as you can see  
13 from paragraphs basically 18 to 59, goes on at length  
14 about what happened at Mercy Health Care -- Mercy Health  
15 Partners; what happened in Muskegon. It goes on and on  
16 that she was seen on this day, she was sent home, she  
17 was seen again on that day.

18 The standard of care allegations at  
19 paragraph 52 all relate to what the hospital in Muskegon  
20 did or did not do.

21 So we believe under the prevailing case law,  
22 Your Honor, that venue is not proper here because the  
23 substantial parts of the events that gave rise to the  
24 cause of action did not occur in the Eastern District of  
25 Michigan.

1           Now even, Your Honor, if venue were proper,  
2 we believe the case should be transferred to the Western  
3 District of Michigan for the convenience of the parties  
4 and the witnesses.

5           Now, there are a number of factors, of  
6 course, that have to be taken into account. The first  
7 one is venue is proper in the district to which the  
8 movant wants the case transferred.

9           Well, there is no dispute that the Western  
10 District of Michigan is a proper venue for this case.  
11 The convenience of the Plaintiff and the doctors and the  
12 other health care professionals at Mercy Health Partners  
13 in Muskegon are clearly served by transferring. It is  
14 those treaters who allegedly carried out the directives.  
15 The treaters who saw the Plaintiff. The treaters who  
16 allegedly didn't follow the standard of care. For  
17 convenience -- and those are all going to be witnesses  
18 in this case.

19           So under the case law we've cited, the  
20 McCuiston versus Hoffa case at 313 F.Supp 2d 710 holds,  
21 and among others, that the convenience of the witnesses  
22 is perhaps the most powerful factor.

23           I should end out, Plaintiff's opposition to  
24 our motion for change of venue does not identify a  
25 single witness in this District.

1           You will note that the individual Defendants  
2   are all citizens of different states. That not one  
3   witness even they have identified who resides in the  
4   Eastern District of Michigan.

5           And again, as I said, Plaintiff resides in  
6   the Western District.

7           So it is not a matter of really transferring  
8   a case to a forum convenient to Plaintiff, it would,  
9   frankly, be more inconvenient for this Plaintiff.

10          And as Judge Quist ruled in the Steelcase  
11   matter at 210 F.Supp 2d 920, that where the plaintiff  
12   does not reside in the chosen forum or whether none of  
13   the operative facts occurred in the district, the court  
14   assigns less weight to the plaintiff's choice of forum.

15          Plaintiff has chosen a forum that actually  
16   bears no relationship, in our view, to this case.

17          And finally, Your Honor, the source of proof  
18   of the medical records, again, the witnesses are all in  
19   the Western District of Michigan. They can't be hauled  
20   into this District to testify. They all live well  
21   outside the 100 mile radius.

22          Therefore, we believe that all the factors  
23   for transferring venue to the Western District of  
24   Michigan are satisfied in this case, Your Honor. Thank  
25   you.

1 THE COURT: All right. Thank you very much.

2 MS. TUCKER: Your Honor, the Co-Defendants  
3 have also filed papers on this Motion and I'm not sure  
4 if they want to address the Court before --

5 THE COURT: Do you want to argue?

6 MR. GETTO: I was going to get up and say,  
7 Your Honor, I think Mr. Levasseur covered all the issues  
8 very thoroughly and very properly and I don't think  
9 there is anything I have to add.

10 THE COURT: Thank you very much.

11 MS. TUCKER: Then I guess it is my turn.

12 Good afternoon, Your Honor. May it please  
13 the Court, Your Honor, in an attempt to avoid suit in  
14 this Court, the Defendants repeatedly attempt to frame  
15 our claims as ones for medical malpractice, but that is  
16 simply not the case. In fact, our claims are far  
17 different.

18 Our claims are that Defendant USCCB  
19 negligently promulgated the directives with the  
20 knowledge and intent they would govern care provided to  
21 pregnant women in Catholic hospitals including the over  
22 15 hospitals in Michigan.

23 And our claims against the individual  
24 Defendants, who are, in fact, representatives of  
25 Catholic Health Ministries, for the purpose of this

1 litigation, that they adopted the directives in this  
2 District which ultimately dictated the care that Ms.  
3 Means received. And as a result of the actions of the  
4 Defendants, Ms. Means suffered severe emotional  
5 distress. And at a point after she was approximately 18  
6 weeks pregnant, her water broke and she went to the  
7 hospital -- the only hospital in her county -- on three  
8 separate occasions and was denied the necessary  
9 treatment and care.

10 And so it was not because she had the  
11 misfortune on these three occasions just to encounter  
12 physicians and nurses who did not know what the proper  
13 standard of care was, it was because USCCB's policy  
14 prevented any doctor, any nurse, any staff member at  
15 that hospital from providing the care that Ms. Means  
16 needed. And that is what our claims are about.

17 As Defendants argued the venue statute that  
18 we have sued under, which is 28 USC 1391(b)(2), in that  
19 Section, it says that a civil action may be brought in a  
20 judicial district in which a substantial part of the  
21 events or omissions giving rise to the claims occurred.

22 The Sixth Circuit has interpreted this  
23 provision as allowing venue in any forum with a  
24 substantial connection to the plaintiff's claim.

25 The Sixth Circuit has further iterated that

1 it doesn't matter whether or not there are other  
2 districts with an even more substantial connection to  
3 plaintiff's claim, that it is not going to engage in  
4 that kind of inquiry, all that matters is whether the  
5 forum that plaintiff has chosen is, in fact, proper.

6 So as previously stated, our claims center  
7 on a policy that was drafted by USCCB and then adopted  
8 by Catholic Health Ministries, again represented by the  
9 individual Defendants.

10 Unquestionably then the district where the  
11 decision was made, in fact, to adopt the policy has  
12 substantial connection to the claim.

13 There is no other way that the directives  
14 drafted in D.C. would ever have been implemented in  
15 Muskegon were it not for the actions of CHM in this  
16 District.

17 And Your Honor, I know that the entity of  
18 CHM may be somewhat confusing so let me just lay that  
19 out at this point.

20 Trinity Health, which is headquartered in  
21 Livonia, Michigan, in the Eastern District, is the  
22 second largest Catholic health care system in the  
23 country. That health care system, of which Mercy Health  
24 Care Partners in Muskegon is a part, has delegated  
25 certain responsibilities to Catholic Health Ministries,



1 and one of those responsibilities deals with the  
2 decision whether to adopt certain policies, including  
3 the directives.

4 Because it is an unincorporated association  
5 under Michigan law, the law that governs in this case,  
6 it can be sued for its acts under its own name or in the  
7 name of any of its members. And that is what we have  
8 done here.

9 So all of this argument that the decision  
10 that was made to adopt the directives was made by a  
11 nonparty is just a red herring, because we have, in  
12 fact, sued the representatives of CHM and they are  
13 represented here today.

14 But even if that were true, even if you  
15 consider the individual Defendants to be nonparties,  
16 despite the fact it was Ms. Mollison that, in fact,  
17 signed the document making the directives binding on  
18 Mercy Health Partners, even if that is the case, there  
19 is nothing in the case law, nothing in the venue statute  
20 that says the substantial acts that are necessary for  
21 venue that they have to be committed by a party.

22 Because that provision of the venue statute, it focuses  
23 on the claims, and so you look at the entire sequence of  
24 events giving rise to the claim to determine whether  
25 venue is proper.

1           So we look at what has happened in this case  
2           and what we are suing on is after the Defendants drafted  
3           the directives, somehow MHP had to get the directives,  
4           had to be told that it was going to comply with the  
5           directives. Or we would not be here. Ms. Means would  
6           not have been given substandard care. Ms. Means would  
7           not have suffered harm.

8           And that decision, which Defendants have not  
9           disputed, was made by Catholic Health Ministries in the  
10          Eastern District of Michigan.

11          THE COURT: And how do you know that?

12          MS. TUCKER: Well, for two reasons, Your  
13          Honor. One, we had attached a document to our venue  
14          motion that lists Catholic Health Ministries' location  
15          as Novi, Michigan, which is in the Eastern District.

16          Two, our allegations for this motion are  
17          taken as true and Defendants have not even disputed that  
18          CHM made the decision here.

19          And when venue is proper in this forum, as  
20          it is here, Defendants have an incredibly high burden to  
21          show that transfer to another forum is warranted.

22          The factors that courts are instructed to  
23          consider by the transfer venue statute 1404(a) is the  
24          convenience of the parties and the witnesses and the  
25          interest of justice.

1           So let's look at the parties. This is a  
2           diversity action. All of the Defendants are out of  
3           state. They have not made any showing that travel to  
4           Grand Rapids would be less onerous than travel to  
5           Detroit, which is an international airline hub.

6           As far as the Plaintiff is concerned, they  
7           have no right to assert what would be more convenient  
8           for the Plaintiff, and Plaintiff has at no point said  
9           this forum would be inconvenient for her.

10          As far as the witnesses --

11          THE COURT: She is a resident of the Western  
12          District; is that correct?

13          MS. TUCKER: She is, yes.

14          And as far as the witnesses that are  
15          relevant to this action, there are two important things  
16          to consider.

17          One, again, this is not a medical  
18          malpractice case, so while there may -- and I repeat  
19          "may" -- be some important people in the Western  
20          District, this action, the claim occurred two and a half  
21          years ago.

22          Defendants have made no showing that any of  
23          the relevant witnesses are still at MHP or actually  
24          reside in the Western District.

25          Most important, witnesses are going to be

1 those individuals who took part in the drafting and  
2 adoption of these policies.

3 And with respect to the adoption, because  
4 CHM is here, because, as we have stated in our  
5 Complaint, all of the members of CHM are also members of  
6 the Board of Directors of Trinity Health, again located  
7 here, we have every reason to believe that the relevant  
8 people for this action will either directly be in the  
9 Eastern District at this time or will be travelling to  
10 the Eastern District to conduct their affairs.

11 Defendants have also failed to show that in  
12 any way the interest of justice would be better served  
13 by transfer to the Western District of Michigan.

14 So in conclusion then, venue is, in fact,  
15 proper in this forum because there can be no question  
16 that the decision to, in fact, adopt the directives is a  
17 substantial one with respect to the claims that we have  
18 brought, not the claims the Defendants say we have  
19 brought.

20 Defendants have not met their burden. And  
21 it is their burden, they have not met it, of showing  
22 that transfer is warranted. And thus, the action should  
23 remain in the Eastern District.

24 THE COURT: Who do you anticipate will be  
25 your witnesses?

1 MS. TUCKER: Well, first, the current  
2 members or the past members of CHM we anticipate  
3 calling. Two, the members of Trinity Health as they are  
4 the parent company of MHP. And as the parent company,  
5 they can be instructed to require that employees of MHP  
6 appear in this Court. And three, any witnesses that we  
7 may bring.

8 As I said, this is not our burden.  
9 Defendants want a transfer, so they must show that the  
10 witnesses they want are, in fact, outside of this  
11 District.

12 THE COURT: Do you -- but my question is  
13 really what witnesses are you going to have? You're  
14 going to have CHM, Trinity Health, are you going to have  
15 the Plaintiff?

16 MS. TUCKER: Yes, we will have the  
17 Plaintiff.

18 THE COURT: Anyone else?

19 MS. TUCKER: Yes. We will have multiple  
20 representatives of USCCB we expect. And we certainly  
21 will have plenty of experts that we have already located  
22 who are, in fact, in the Eastern District of Michigan to  
23 explain what the care is that Plaintiff was supposed to  
24 receive.

25 THE COURT: And are you going to have

1 anybody from the hospital in the Western District?

2 MS. TUCKER: We know that we will have one  
3 person who is still there, but with respect to the  
4 hospital and the treating physicians back in 2010, Your  
5 Honor, we have not yet looked to see where their current  
6 residences are.

7 THE COURT: Are they going to be witnesses?

8 MS. TUCKER: We expect them to be, yes.

9 THE COURT: Okay.

10 MS. TUCKER: Thank you so much.

11 THE COURT: Do you wish to reply, but do not  
12 reargue your motion.

13 MR. LEVASSEUR: I will be brief, Your Honor.

14 I should point out, Your Honor, that the  
15 physicians who work out of the hospital are not  
16 employees of Mercy Health Partners. As with most  
17 hospitals, they're contractors so we can't control them.

18 It would be accurate to say that the parent  
19 company of the subsidiary can be forced to bring a  
20 witness in, which I believe that is the law, but, with  
21 regard to this notion that experts are going to be used,  
22 they haven't identified any experts, but the convenience  
23 of an expert is probably the least of anybody's concern.  
24 They're hired to come and give opinions and that is part  
25 of the price of or cost of doing business in testifying

1 is sometimes it's in different locations.

2 But even if that was a factor, the Plaintiff  
3 hasn't identified any experts that would be testifying.

4 But you know, the big assumption here that  
5 Ms. Mollison or that Ms. Mollison or Mr. Urban or Mr.  
6 Ladenburger ever stepped foot in the state of Michigan  
7 in 2009 when the directives were adopted, that is  
8 Plaintiff's burden. That is Plaintiff's burden to  
9 demonstrate that venue is proper in this District and  
10 that they engaged in activities that would make it fair  
11 for them to be hauled into this District to defend  
12 actions that took place in 2010 in the Western District  
13 of Michigan.

14 And however you frame the Plaintiff's  
15 claims, whether it is a malpractice case, whether it is  
16 simply a negligence case, all I can do is sum up and  
17 refer to, again, the Plaintiff's Complaint.

18 The standards of paragraph 52:

19 The standard of medical care required MHP  
20 to:

21 (A) to inform Plaintiff about her treatment  
22 options...

23 (B) to inform Plaintiff about the health  
24 risks...

25 (C) to inform Plaintiff about the fact if

1 she continued her pregnancy there was  
2 virtually no chance that the fetus would  
3 survive to term;

4 (D) to provide appropriate medical care to  
5 Plaintiff.

6 All of that, you know, sums up the basis of  
7 the claim.

8 Where the directives were all adopted or not  
9 has no bearing on the ultimate allegations in this case;  
10 that is, whether she received the appropriate standard  
11 of care.

12 And they framed that issue, Your Honor.  
13 That is an issue they framed with the activities of or  
14 lack thereof of Mercy Health Care Partners of Michigan  
15 in mind. Those are the actions, from their own  
16 Complaint, that they repeatedly go on about.

17 It is that what is important and those are  
18 the witnesses.

19 And even if you were to find venue is proper  
20 in this case and it is appropriate convenience, that is  
21 who you should consider, people who actually have that  
22 standard of care or didn't follow the standard of care.  
23 They're in Muskegon.

24 And I should note that Plaintiff Counsel has  
25 not addressed the fact of venue with regard to the U.S.



1 Conference of Catholic Bishops. Venue has to be proper  
2 as to them, and it has to be proper as to each and every  
3 one of the individual Defendants, Your Honor. Thank  
4 you.

5 THE COURT: All right. Thank you very much.

6 Do you wish to reply?

7 MR. GETTO: Actually, yes.

8 Very briefly, Your Honor, Cameron Getto on  
9 behalf of the Conference of Catholic Bishops.

10 I think it is very important to have correct  
11 on the record, Your Honor, that this Court is going to  
12 be passing on the legal issues in this case according to  
13 Michigan law, a tort case at its heart, and there is no  
14 pendant federal tort law.

15 Assuming that Michigan law will apply to  
16 this case, this is most certainly an action alleging  
17 medical malpractice. There can be no question that it  
18 is.

19 Michigan statute 600.1483, and a number of  
20 other statutes, govern what constitutes medical  
21 malpractice cases.

22 The Supreme Court in Brian versus Oakpointe  
23 Villa is a case that essentially states any time a  
24 licensed health care provider is accused of malpractice  
25 and medical issues are involved, you have a malpractice

1 case on your hand.

2 There is going to be a central issue, if we  
3 ever get to the merits, which I'm not here to address  
4 because we're asserting that personal jurisdiction  
5 doesn't apply, but the point is this is definitely a  
6 medical malpractice case under Michigan law. I don't  
7 think there is any reasonable argument to the contrary.

8 What they're trying to say is it is not a  
9 medical malpractice case but what the Defendants did  
10 caused medical malpractice to occur. Under Michigan  
11 law, that is a malpractice case, Your Honor. Thank you.

12 MS. TUCKER: Your Honor, may I briefly  
13 reply?

14 THE COURT: Are you going to say something  
15 new that you didn't say before?

16 MS. TUCKER: Yes.

17 THE COURT: Okay.

18 MS. TUCKER: One, to address his claims that  
19 under Michigan law our claims are essentially ones for  
20 medical malpractice, in the Bryant case, it sets forth a  
21 two-part test for courts to use to determine whether an  
22 action is one for medical malpractice or one for  
23 negligence, and in that case, the threshold is whether  
24 the claim is against a licensed health care provider or  
25 is it against a nonmedical entity. And if it is against

1 a nonmedical entity, that case says you can't even sue  
2 it for medical malpractice under Michigan law.

3 So since the Conference of Catholic Bishops  
4 and the individual Defendants are not medical providers,  
5 they could not be sued for medical malpractice, and in  
6 fact, have not been sued. Thank you, Your Honor.

7 THE COURT: Okay. Thank you.

8 Now let's go to the Motion to Dismiss.

9 MR. GETTO: Thank you, Your Honor. I do  
10 believe that we, all the parties have done an excellent  
11 job of briefing this issue, so I'm not going to belabor  
12 the issues that are raised in the briefs.

13 And I'm not going to go all through the  
14 cases, although I do believe the briefs set forth that  
15 virtually every single, if not every single, case cited  
16 by Plaintiff is distinguishable for the unusual and  
17 unique facts of this case.

18 Instead, Your Honor, what I would like to  
19 focus on is kind of the bigger picture, the more global  
20 picture.

21 There is a central flaw I think in the  
22 ideology or the methodology that Plaintiff is using to  
23 pursue personal jurisdiction over the United States  
24 Conference of Catholic Bishops.

25 What Plaintiff doesn't seem to understand is

1 because the USCCB is a professional organization, it  
2 doesn't tell bishops what to do, bishops tell it what to  
3 do.

4 Moreover, Plaintiff has completely neglected  
5 to create any connection between the promulgation of  
6 these directives, which occurred in Washington, DC --  
7 entirely in Washington, DC -- and which were published  
8 in Maryland and what occurred in this case.

9 Essentially, Plaintiff's central argument  
10 was the Plaintiff was the victim of malpractice by a  
11 physician who was an independent contractor of a health  
12 group, that was in some way affiliated with a larger  
13 parent organization, that was also a health group, that  
14 was in some way a member of the USCCB.

15 With due respect to Plaintiff, there is not  
16 a single case in any of these briefs that comes close to  
17 addressing that tenuous of a connection.

18 And in fact, if we turn to some of the cases  
19 in the Plaintiff's brief, like for example the Lanier  
20 case, I think what we find is the opposite. In every  
21 single one of these cases, the connection was between  
22 the plaintiff and the defendant in the case.

23 Here, we have no connection whatsoever  
24 between the Plaintiff and the Defendants, and instead,  
25 an attempt to chain together an intermediary connection

1 with other people in an attempt to create personal  
2 jurisdiction in Michigan.

3 In Lanier, there was the attempt to make the  
4 connection between Dr. Lanier and the Board of  
5 Endotonics to a contractual arrangement whereby the  
6 prestige of the Board's certification would be conferred  
7 upon Dr. Lanier of Michigan in consideration of her  
8 pledge to the Board's criteria for certification  
9 eligibility.

10 Mainly, I mean, it is obvious that in this  
11 case, the Board's contract with Dr. Lanier of Michigan  
12 was for the purpose of establishing a business  
13 relationship. It is a contractual type of a claim.

14 I set forth in the long footnote on page 2  
15 of my brief the recitation of each case that the  
16 Plaintiff has cited and why that connection has nothing  
17 to do with the connection in this case.

18 Again, each case cited by the Plaintiff is a  
19 direct connection between the plaintiff and the  
20 defendant.

21 I don't think that the Plaintiff seriously  
22 contests general jurisdiction, although it appears that  
23 a number of contacts, and I mean, in this day and age it  
24 is impossible for an organization the size of USCCB not  
25 to have some contact with Michigan on some occasions,

1 although they cite to some contacts, and none of them  
2 come close to any of the analyses in any of the cases  
3 that would give rise to a claim, in my view, for general  
4 jurisdiction.

5 I'm not going to use up the Court's time  
6 with that argument because I don't think it is being  
7 meaningful contested at this time.

8 When we turn our attention, Your Honor, to  
9 specific jurisdiction, again, the connection here  
10 supposed by Plaintiffs and that is alleged by the  
11 Plaintiff, doesn't involve the Plaintiff and the  
12 Defendant.

13 Every single case having to do with specific  
14 jurisdiction talks about the reason jurisdiction is  
15 being conferred on the Court is because of the  
16 connection between the plaintiff and the defendant. I  
17 think the concept is whether or not the actual subject  
18 matter of the dispute occurred in Michigan.

19 And here, the USCCB didn't do anything in  
20 Michigan. It had no physical presence in Michigan. It  
21 committed no acts in Michigan. There is just nothing.

22 And I believe this is a central flaw in  
23 Plaintiff's case.

24 I don't believe they have in any way, shape  
25 or form put together the argument that this Court has

1 personal jurisdiction at this time.

2 Now, I should throw in here at the end that  
3 it was unclear to me why the Plaintiff argued waiver.

4 Now, we filed a special appearance, Your  
5 Honor, in this case, and we made three things clear.  
6 One, that we intended to contest venue. Two, that we  
7 intended to contest personal jurisdiction. And three,  
8 that we didn't intend to waive anything. We were out  
9 to be the first to the courthouse steps in arguing  
10 venue, but we were placed in a position where we felt we  
11 were obligated to respond. So we responded.

12 When I then filed this motion, I received a  
13 response that says, oh, I filed my own motion, you have  
14 waived. I don't believe that we waived anything. This  
15 was not a responsive pleading. It is not a pleading at  
16 all. It is not even a substantial defensive move  
17 because it is venue. It is a procedural issue.

18 I would just ask that the Court disregard  
19 that argument. I think it is somewhat disingenuous that  
20 our perceived constitutional rights to individuals and  
21 organizations would argue that we have in some way  
22 waived our right to contest personal jurisdiction in  
23 this case, particularly under the circumstances and  
24 given all of the trouble that we went to to make it  
25 clear to everybody what we were doing and the fact that

1 nobody objected.

2 Thank you, Your Honor.

3 THE COURT: All right. Thank you.

4 MS. TUCKER: So as Defendant ended on  
5 waiver, I would like to start with the waiver issue.

6 We don't dispute what Defendant just said.  
7 It did file a special appearance, and as it says now, it  
8 says that it filed it so it can do a whole host of  
9 things. It wanted to preserve its defense of personal  
10 jurisdiction. It wanted to argue venue. It didn't want  
11 to waive anything.

12 One, special appearance does not contemplate  
13 all these things. It is for one purpose and that is to  
14 preserve the defense of personal jurisdiction.

15 So when USCCB filed its special appearance  
16 and said it was going to concur and then told Plaintiff  
17 that it was going to file a response to its  
18 Co-Defendant's motion, Plaintiff then, I think  
19 understandably said we would like a chance to respond to  
20 both you and your Co-Defendants.

21 But again, it was a response intended and  
22 that USCCB's relief would be a concurrence, which is  
23 something seeking concurrence, which is something  
24 seeking the exact same relief as Co-Defendants but  
25 perhaps for different reasons.



1           However, what USCCB did when it filed its  
2     response, it asked for something that even its own  
3     Co-Defendants didn't even ask for. Instead of asking  
4     for a change of venue, USCCB says it wants the case  
5     outright dismissed because of improper venue.

6           That is a defense under Rule 12(b)(3). The  
7     federal rules say that you can either present the  
8     defense of improper venue in an answer or in a motion  
9     under 12(b). Then the rules go on to say in 12(g) that  
10    you're required to raise all of your 12(b) defenses in a  
11    single motion. Rule 12(h) then says if you don't, then  
12    the defense that you failed to raise in that motion is  
13    waived.

14           It cannot be seriously contended that the  
15    response USCCB argued wasn't answered though it can only  
16    be a 12(b)(3) motion since it did request dismissal for  
17    improper venue.

18           However, Defendant states in its reply brief  
19    on page 6 that it did not assert or request any relief  
20    not already raised in its Co-Defendants' motion. Yet,  
21    on page 9 of its Co-Defendants' motion, in the  
22    Conclusion section, the individual Defendants say  
23    Defendants respectfully request that venue be  
24    transferred to the Western District of Michigan. That  
25    is all they asked for.

1           However, on page 8 of USCCB's Motion, in its  
2 Conclusion, it states that Defendant USCCB requests it  
3 be dismissed from the case for lack of proper venue.  
4 Alternatively -- alternatively -- the Conference concurs  
5 in the request for transfer of venue by Co-Defendants.

6           Thus, USCCB itself recognizes that it is  
7 both concurring and filing its own separate request for  
8 relief.

9           And in our brief, we have cited cases from  
10 the Sixth Circuit and across the country where a party  
11 has filed a brief requesting dismissal for improper  
12 venue and subsequently tried to file another brief  
13 requesting dismissal for lack of personal jurisdiction  
14 and courts have unanimously said you cannot do that.  
15 The Sixth Circuit did not even allow a pro se defendant  
16 who said, you know, you should construe it liberally,  
17 courts, because I'm a pro se defendant, the Sixth  
18 Circuit said, no, the rules are very clear and they do  
19 not allow that.

20           So we think that Defendants have waived any  
21 personal jurisdiction argument.

22           However, even if that is not what the Court  
23 finds, personal jurisdiction is proper in Michigan for  
24 the following reasons.

25           One, Defendants consistently tried to refer

1 to our claims as something completely novel and  
2 unprecedented. But Defendant has acknowledged here  
3 today that USCCB is a professional association, and  
4 there are a whole line of cases that we have cited in  
5 our brief that stand for the proposition that when such  
6 an association voluntarily undertakes the task of  
7 drafting policies, standards, warnings for third parties  
8 to use with the intent that the third parties use them,  
9 and if the third party actually uses them and causes  
10 another person harm, the association is liable for that  
11 harm. This is not new. Nothing novel about our claim.

12           However, regardless of whether that is so,  
13 there is certainly no novelty in the idea that in  
14 out-of-state defendants that purposely directs its  
15 out-of-state activities into the forum state, it can be  
16 subject to jurisdiction in that forum state.

17           This has been the case since International  
18 Shoe was decided over seven decades ago.

19           So when we look at International Shoe and  
20 what the law is that the Sixth Circuit has set forth,  
21 one, that the Defendant has purposely directed its  
22 activities towards the forum. Two, that the case arises  
23 out of those activities. And three, that jurisdiction  
24 is, thus, reasonable.

25           So Defendant, I noticed, argued that the

1 cases require a defendant to have purposely directed its  
2 activities towards a specific plaintiff. That is not  
3 the case, and there is no case that has stood for that  
4 proposition.

5 What the cases say is the defendant has to  
6 direct its activity towards the forum. It also says  
7 they arise from the second prong that connects these  
8 activities to the plaintiff.

9 So we'll start looking at how Defendant has  
10 purposely directed its activities to the state of  
11 Michigan.

12 Purposeful is a synonym of intentional.  
13 And that is why all the courts, from district courts all  
14 the way up to the Supreme Court, focused on the  
15 defendant's intent when doing the activity at issue when  
16 deciding whether personal jurisdiction is proper.

17 And to show intent, the Supreme Court in  
18 Asahi has stated if a defendant designs the product so  
19 that it can go in the forum state, that is evidence of  
20 intent.

21 So let's just look at some of the things  
22 that Defendant USCCB has done to design its product for  
23 implementation in the state of Michigan.

24 One, the language of the directives itself.  
25 The directives, the full name of the directives are,

1 "Ethical and Religious Directives for Catholic Health  
2 Care Services".

3 Thus, at the outset, it intended for its  
4 directives to be implemented at Catholic hospitals.

5 Two, the language from the directives says,  
6 Catholic health care services must adopt these  
7 directives as policy and requires adherence to them  
8 within the institution as a condition for medical  
9 privileges and employment and provide appropriate  
10 instruction regarding the directives for administration,  
11 medical and nursing staff and other personnel.

12 Then it goes on in the directive that anyone  
13 who is an employee of a Catholic health care institution  
14 must respect and uphold the religious mission of the  
15 institution and adhere to these directives.

16 There has been no dispute that the hospital  
17 that Ms. Means went to is a Catholic health care  
18 service.

19 So when it drafted this and said that  
20 Catholic health care services must -- must -- adopt  
21 these directives as policy, it clearly intended that  
22 Catholic health care services in Michigan and elsewhere  
23 would, in fact, adhere to them.

24 Next, at the end of the directives it says  
25 that it is going to, in addition to it, any authority it

1 has and the hierarchy for that, Catholics in the United  
2 States. In addition to that, it is going to recommend  
3 that the individual bishops that comprise the  
4 organization implement those directives in their  
5 respective dioceses.

6           Next, USCCB updates and clarifies its  
7 directives, and with respect to this specific directive  
8 at the heart of this case, the directive that prohibits  
9 termination of viable pregnancies in all circumstances,  
10 when there was a Catholic hospital in the state of  
11 Arizona that adhered to the directives and was  
12 confronted with the situation where a woman was 11 weeks  
13 pregnant and had a heart condition that her physician  
14 told her death was near certain if she continued the  
15 pregnancy. The hospital did not know what to do under  
16 the directives and decided that the directives must  
17 allow it to perform this life-saving procedure. And so  
18 that is what, in fact, it did. A few months later,  
19 USCCB then issued a written statement to clarify that  
20 its directive does, in fact, not permit the life-saving  
21 procedure at issue.

22           And then, according to its own news service,  
23 provided that clarification to all of the bishops,  
24 including the bishops with jurisdiction over the  
25 hospital Plaintiff went to.

1           And lastly, let's not forget the obvious,  
2   that USCCB's health care policies are not called  
3   recommendations or guidelines, they are, in fact, called  
4   the directives. And by its own directives, a directive  
5   is an order to do something.

6           The due process that's at issue in this case  
7   protects defendants from random unforeseeable fortuitous  
8   acts that it had no way of knowing whatever happens.

9           So in order for USCCB to prevail in this  
10   case, it has to be that somehow randomly -- even though  
11   it did draft directives and did tell all Catholic health  
12   care services it did have to adhere to them, it did  
13   provide the clarification on the directives at issue --  
14   that even though it takes all of those steps, it is just  
15   a random unforeseeable event that MHP, as a Catholic  
16   health care service, went and adhered to the program  
17   when it decided what treatment it was and was not going  
18   to give to the Plaintiff.

19           USCCB's claim that it simply drafted the  
20   directives, placed them in there and they somehow have  
21   no action on USCCB's part is simply not credible.

22           And lastly, Defendant also attempts to say  
23   that what MHP did was the unilateral act of a third  
24   party; something it could not at all be responsible for.

25           And as I've just indicated, the directive

1 was specifically created for implementation at Catholic  
2 health care services.

3 Michigan is home to the second largest  
4 Catholic health care system in the country. There is no  
5 way that Defendant did not intend when it said in its  
6 language that all Catholic health care services must  
7 adhere to the directive, it did not expect the second  
8 and largest health care system, including the hospital  
9 Ms. Means went to, to adhere to those directives.

10 And to the extent the Court would like  
11 further information on this issue, I would request an  
12 opportunity to conduct limited discovery.

13 And one more point, Your Honor, and just to  
14 address an argument that USCCB repeatedly raises in its  
15 brief, I just want to be clear to the Court and to the  
16 Defendants that this case is not an attack on USCCB's  
17 religious freedom. Certainly Ms. Means has no interest  
18 in prohibiting USCCB from exercising its opinions and  
19 Plaintiff Counsel at the ACLU certainly doesn't either,  
20 but what we do take issue with and what is actually at  
21 issue in this case is that they cannot make health  
22 policy for implementation at hospitals open to the  
23 public with the intent that the hospitals rely on that  
24 policy where those policies are going to conflict with  
25 the applicable standard of care and increase the risk of



1 patient harm.

2 And unfortunately, as in Ms. Means's case,  
3 actually caused her not to be free of harm and that is  
4 what we claim it did and that is all we're claiming.

5 So in conclusion, USCCB claims that despite  
6 its language saying its directives must be followed by  
7 Catholic hospitals, despite the fact that there are at  
8 least 15 such hospitals in Michigan where the directives  
9 are followed, and despite the fact that it was a  
10 Michigan hospital's adherence to USCCB's policy that  
11 caused Ms. Means's harm, again in Michigan, USCCB's  
12 claims it would somehow be unfair for it to even have to  
13 defend itself in a court in Michigan.

14 We respectfully disagree. We believe that  
15 it is more than fair because it is through no fault of  
16 Ms. Means that when she went to the hospital and that  
17 hospital, instead of providing her with the applicable  
18 standard of care, adhered to USCCB's directive, as USCCB  
19 instructed them to do. That did not happen because of  
20 something Ms. Means did, that happened because of what  
21 USCCB did.

22 And for that reason, personal jurisdiction  
23 is not only proper and reasonable, it is imminently  
24 fair. Thank you, Your Honor.

25 THE COURT: Okay. Thank you.

1 Do you wish to reply?

2 MR. LEVASSEUR: Yes, Your Honor. Thank you.

3 I direct the Court's attention to the  
4 affidavit of Linda Hunt that is attached to actually  
5 both of the motions. She is the Associate General  
6 Secretary of the United States Conference of Catholic  
7 Bishops and I think she has six pages of text that  
8 explain why there is no connection between USCCB and  
9 Michigan.

10 There can be no question that the USCCB is  
11 not home in Michigan. It is 500 miles away. It has no  
12 business presence here whatsoever. It doesn't have an  
13 office here. It doesn't accept mail here. It doesn't  
14 have any landholdings here. It has no property here.  
15 There is simply no presence in Michigan that the USCCB  
16 has or has had in any time in the distant past.

17 Under I think the traditional notion of  
18 fairness and substantial justice, it is not appropriate  
19 to haul the USCCB into court here in Michigan.

20 But more importantly, Your Honor, if you  
21 review this Affidavit to which the ethical directives  
22 are attached, you will find no directive that tells  
23 anyone, health care provider or anyone else, to breach a  
24 standard of care.

25 You will find no directive that tells anyone

1 to neglect their legal duty to a patient. You will find  
2 no directive that tells anyone that it is okay to harm a  
3 patient if it is consistent with your religious beliefs.

4 Put simply, Your Honor, these don't really  
5 say what the Plaintiff says they say. And that is a  
6 real problem with the case because these words are the  
7 connection that Plaintiff is using to attempt to assert  
8 both personal jurisdiction and venue in this case.

9 With due respect to the Plaintiff, these  
10 don't say what they want the Court to believe they say  
11 and they don't tell anyone to do anything wrong,  
12 anything inconsistent with their legal obligation or  
13 harm the Plaintiff.

14 And for Plaintiff to make that assertion,  
15 that is simply a very cynical and, in my view, sinister  
16 interpretation of what these ethical principles are.

17 These are the Catholic church's religious  
18 philosophies. They're entitled to it and they're  
19 constitutionally entitled to say we believe the  
20 Catholics ought to behave this way. But to then argue  
21 that they somehow told the doctor to send a woman whose  
22 water has broken and is going to lose a baby home, it is  
23 far beyond the plausible boundaries of what these  
24 ethical directives are, were ever intended to say or  
25 could be reasonably interpreted to say.

1                   THE COURT: I'm going to take your motion  
2 under advisement and I will give you a written order.

3                   (Proceedings concluded at 3:15 p.m.)

4                   \* \* \* \* \*

C E R T I F I C A T I O N

I, CHERYL E. DANIEL, Official Federal Court Reporter, after being first duly sworn, say that I stenographically reported the foregoing proceedings held on the day, date, time and place indicated. That I caused those stenotype notes to be translated through Computer Assisted Transcription and that these pages constitute a true, full and complete transcription of those stenotype notes to the best of my knowledge and belief.

I further certify that I am not of counsel nor have any interest in the foregoing proceedings.

/S/

CHERYL E. DANIEL,

FEDERAL OFFICIAL COURT REPORTER